

DOLL AMIR & ELEY LLP

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CAPITAL ONE BANK (USA), N.A.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DEON L. THOMAS Pro Se

Plaintiff,

v.

BLEIER & COX LLP, NCO
FINANCIAL SYSTEMS, INC.,
CAPITAL ONE aka CAPITAL ONE,
NATIONAL ASSOCIATION, CAPITAL
ONE FINANCIAL CORP., CAPITAL
ONE BANK (USA), N.A.
("COBUSANA"), and DOES 1 through
10,

Defendants.

Case No. CV11-04428 AHM (OPx)

**DECLARATION OF HEMMY SO IN
SUPPORT OF DEFENDANT
CAPITAL ONE BANK (USA), N.A.'S
OPPOSITION TO PLAINTIFF'S
MOTION FOR DEFAULT
JUDGMENT**

Date: August 22, 2011
Time: 10:00 a.m.
Judge: Hon. A. Howard Matz

DECLARATION OF HEMMY SO

I, Hemmy So, declare:

1. I am an attorney duly licensed to practice law in California, and am an associate at the law firm of Doll Amir & Eley LLP, counsel of record for Defendant Capital One Bank (USA), N.A. ("Capital One"). I submit this declaration in support of Capital One's Opposition to Plaintiff's Motion For Default Judgment. The following facts are true of my own personal knowledge and, if called upon to testify, I could and would testify competently thereto.

2. On or about July 12, 2011, I received a copy of an email from my colleague Hunter R. Eley to Plaintiff Deon L. Thomas, regarding Mr. Thomas's desire to discuss his case with Capital One's attorneys. Attached hereto as **Exhibit A** is a true and correct copy of an email from Hunter R. Eley to Deon L. Thomas and copying Hemmy So, dated July 12, 2011.

3. In response to Mr. Thomas's July 12, 2011 email, I called Mr. Thomas on or about July 14, 2011. During our July 14 phone call, Mr. Thomas and I discussed the nature of his claims. I also asked Mr. Thomas for a settlement demand. We discussed the basis for his settlement demand, as well as Capital One's position with respect to possible settlement.

4. On or about July 21, 2011, I received an email from Mr. Thomas seeking a follow-up conversation to our July 14 call. I called Mr. Thomas that same day (July 21), and we again discussed the nature of his claims and his settlement demand. At that time, I advised Mr. Thomas that I had not yet received a formal settlement demand from him. Later that day, I received Mr. Thomas's settlement demand via e-mail. Attached hereto as **Exhibit B** are true and correct copies of e-mails from Deon L. Thomas to Hemmy So dated July 21, 2011.

5. Due to an inadvertent calendaring error, my office believed Capital One's deadline to file a responsive pleading was July 26, 2011, which was 21 days after the

1 Notice of Acknowledgment and Receipt of the Summons and Complaint (“NAR”)
2 was executed by our office.

3 6. The NAR was received by our office, however, on June 30, 2011.
4 Therefore, the deadline to file and serve a responsive pleading would have been 21
5 days from this date, or July 21, 2011. Upon realizing this error, my office
6 immediately filed Capital One’s Answer on July 25, 2011.

7 7. Starting with our phone call on July 14, 2011, I have been the main
8 attorney from our office communicating with Mr. Thomas about his case. Since that
9 time, Mr. Thomas did not meet and confer with me about his Motion For Default.
10 Nor did Mr. Thomas give me any notice that he intended to file a Motion For Default
11 Judgment.

12 8. I checked the docket for this case on PACER on August 1, 2011.
13 According to my search, no default has been entered against Capital One.

14
15 I declare under penalty of perjury under the laws of United States of America
16 that the foregoing is true and correct. Executed this 1st day of August, 2011, in Los
17 Angeles, California.

18
19 _____
20 /s/ Hemmy So

21 Hemmy So
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PROOF OF SERVICE**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is **1888 Century Park East, Suite 1850, Los Angeles, California 90067.**

On August 1, 2011, I served the foregoing document described as **DECLARATION OF HEMMY SO IN SUPPORT OF DEFENDANT CAPITAL ONE BANK (USA), N.A.'S OPPOSITION TO PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT** on the interested parties in this action by placing the original and/or a true copy thereof enclosed in (a) sealed envelope(s), addressed as follows:

SEE ATTACHED SERVICE LIST

- ☐ **BY REGULAR MAIL:** I deposited such envelope in the mail at 1888 Century Park East, Suite 1850, Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.
- ☐ **BY FACSIMILE MACHINE:** I transmitted a true copy of said document(s) by facsimile machine, and no error was reported. Said fax transmission(s) were directed as indicated on the service list.
- ☒ **BY OVERNIGHT DELIVERY:** I caused such documents to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressees. The envelope or package was deposited with delivery fees thereon fully prepaid.
- ☐ **BY ELECTRONIC MAIL:** I transmitted a true copy of said document(s) via electronic mail, and no error was reported. Said email was directed as indicated on the service list.
- ☐ **BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered by hand to the above addressee(s).

I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 1, 2011, at Los Angeles, California.

/s/ Felicia Dorn

Felicia Dorn

DOLL AMIR & ELEY LLP

SERVICE LIST

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Plaintiff in Pro Se

DOLL AMIR & ELEY LLP